UNITED STATE OF AMERICA
NATIONAL LABOR RELATIONS BOARD
Region 12

GULF COAST REBAR, INC.	:		
	:		
Respondent,	:	**Case Nos.**	**12-CA-149627**
	:		**12-CA-149943**
	:		**12-CA-150069**
and	:		**12-CA-151050**
	:		**12-CA-151062**
	:		**12-CA-151091**
INT'L ASSOC. OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS, AFL-CIO	:		
	:		
Charging Party.	:		
	:		

GULF COAST REBAR, INC. ("GCR") submits the following post-hearing brief of law and argument in the above-captioned case(s).

ISSUES

The Complaint in this case alleged a number of issues, many of which were disposed of through admission or stipulation until only one issue remained, whether GCR violated the Act when it refused to provide information requested by the Union. Specifically, the issue that remained was whether GCR violated Section 8(a)(1) and 8(a)(5) of the Act when it refused to respond to the Union's information request.

STATEMENT OF THE CASE

A. Statement of the Facts

GCR signed a collective bargaining agreement with the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO ("Union") on or about March 13, 2009. (GC Ex. 2; Tr. 22:22 – 5; Tr. 24:24 – 25:2). The Agreement is a pre-hire

Agreement as provided for in Section 8(f) of the Act. The agreement contains a termination clause. (GC Ex. 2: page 12; Tr. 25:3 – 7). The termination clause instructs the party wishing to change or terminate the Agreement to provide written notice via Certified Mail to the other indicating the desire to change or terminate. (GC Ex. 2: page 12.) The final sentence of the clause clarifies that if notice under the article is for a desire to change, that notice shall have the effect of terminating the Agreement. (*Id*.)

The Termination Article does not contain express language of individuals or offices that are to receive notice, rather it states "the other" when referring to the party to be given notice. (*Id*.) The Agreement does not contain express language indicating a beginning time frame, or opening window, for receipt of notice. (*Id*.)

Termination is the only provision in the Agreement for which a contractor is required to utilize Certified Mail. (GC Ex. 2; Tr. 63:5 – 8; Tr. 68: 15 – 22). GCR sent a certified package to Daniel Stephen Parker ("Parker"), President of the Regional District Council ("RDC") on or about February 19, 2010. (Resp. Ex. 3). The RDC refused service of the package. (Resp. Ex. 3; Tr. 68:3 – 11).

GCR stopped complying with the Agreement on or about December 2010. (Tr. 64:24 – 66:1). GCR has not used the JATC as required under the Agreement. (Tr. 66:2 – 5). GCR has not utilized the hiring hall of the Union as required by the Agreement. (Tr. 66:6 – 8). In fact, since December 2010, GCR has not fulfilled any of its obligations under the Agreement. (Tr. 69:5 – 7).

The Union had clear and unequivocal notice of GCR's repudiation through its non-compliance. (Tr. 69:1 – 7). The Union has not filed an Unfair Labor Practice against GCR until the instant case, on or about April 14, 2015, four years and four months after the start of GCR's repudiation. (Tr. 69:8 – 12).

Parker sent the information request that is the subject of the instant case on behalf of Locals 846 & 847. (GC Ex. 5; Tr. 72:20 – 73:15). Parker is authorized to act on behalf of the Locals. (Tr. 73:9 – 15). The collective bargaining agreement is not binding unless executed by the President of the District Council, Parker in this case. (GC Ex. 2: page 13; Tr. 20:22 – 25). Parker, authorized agent of Locals 846 & 847, was aware of GCR's repudiation of the Agreement since December 2010. (Tr. 69:1 – 7).

B. Procedural Posture

The Union filed an Unfair Labor Practice Charge in this matter with Region 12 of the National Labor Relations Board. The Union alleged *inter alia* that the Employer violated the NLRA by (1) instructing employees to not discuss the Union, (2) interrogating employees about their union activity, and (3) refusing to provide information in response to a formal request and that such actions interfered with, coerced, or restrained employees in their exercise of rights granted by Section 7 of the Act.

The Board asked GCR to respond in writing and by affidavit to the charges. GCR submitted a position statement and Chad Jones ("Jones"), GCR owner, provided an affidavit. Following its investigation, the Board filed a Complaint, and a hearing was held on December 15, 2015 at Region 12 of the National Labor Relations Board in front of an Administrative Law Judge, the Honorable Keltner W. Locke. At the completion of the hearing, Judge Locke requested post-hearing briefs from the parties.

SUMMARY OF THE ARGUMENT

GCR is not bound to a collective bargaining agreement with the Union. While it is a fact that GCR executed an agreement on or about March 13, 2009, GCR is no longer bound under that Agreement. GCR tendered proper notice to an authorized agent of the Union, Parker, by Certified

Mail as expressly required by the Agreement. Parker, or his authorized agent, refused service of the Certified Mail package. It is well-established in civil proceedings that refused service is considered good service.

Even if the Board finds defect in the termination under the Agreement as executed, GCR is not bound by the Agreement. GCR affected a complete repudiation of the Agreement and its relationship with the union no later than December 2010. Under well-established Board case law, when a union has clear and unequivocal notice that an employer has repudiated its Agreement, the Union is required to file an Unfair Labor Practice Charge within the 10(b) period following such notice. Parker admitted to being initially aware of GCR's repudiation of the terms and conditions of the Agreement since "Almost day one." (Tr. 65:1).

GCR executed the Agreement on or about March 13, 2009. (GC Ex. 2). Parker's testimony of repudiation from "almost day one" established a time-bar, under 10(b), of September 13, 2010. Parker repeatedly testified that GCR has done nothing to comply with the Agreement since December 22, 2010. If the Board defers to this date as that by which the Union had clear and unequivocal notice, the 10(b) period for filing a charge as required under the law expired on or about June 22, 2011.

The Board has held that when a union receives clear and unequivocal notice of repudiation of a collective bargaining agreement that the union must file an unfair labor practice within the 10(b) period. 29 U.S.C. § 160(b); *A&L Underground*, 302 NLRB 467, 470 (1991). The holding in *A&L Underground* further indicates that absent a filing within the 10(b) period an employer is free to change terms and conditions of employment even including recognition of a different union if it so chooses. *A&L Underground*, 302 NLRB at 468. The Board reasoned that failure to enforce

the 10(b) time-bar "impairs the statutory goal of stabilizing collective-bargaining relationships." *Id.*

When it completely repudiated its Agreement, in Parker's words "from day one," the Union was required to file a charge with the Board no later than September 13, 2009. When it did not adhere to the Board's directive and file a charge, the Union was time-barred under 10(b) and abdicated its right to enforce the Agreement and dictate any further terms and conditions of employment to GCR.

The General Counsel in its complaint alleges a violation of Section 8(a)(1) as a direct result of its refusal to furnish information to the union as requested. A violation of 8(a)(1) asserts GCR's refusal to furnish the information interfered, restrained or coerced its employees in the exercise of their Section 7 rights. The Board requires that such an allegation must be supported by evidence that the action actually produced or reasonably tended to produce such interference, restraint, or coercion. *Curwood, Inc.*, 339 NLRB 1137, 1140 (2003).

General Counsel presented no evidence or testimony demonstrating any interference, restraint, or coercion of rights that resulted from GCR's refusal to provide information. Therefore, no violation of Section 8(a)(1) has been demonstrated.

GCR asserts *ab initio* that the Board should dismiss this action based on the fact that any action based on GCR's repudiation of the Agreement is time-barred under the Act's 10(b) limitation which expired as early as September 2009, but certainly by June 2011 at the latest. The Board should dismiss the charge.

LAW & ARGUMENT

I. NOTICE UNDER THE AGREEMENT

GCR provided notice under the express conditions outlined in the Agreement. The Agreement requires that the notice to terminate be sent by (1) certified mail, (2) to the other party, (3) at least four months prior to February 10. (GC Ex. 2: page 12). Notice not provided under these conditions will result in the contract being extended by an additional year. (*Id*.)

GCR sent its termination by certified mail on or about February 19, 2010. (Resp. Ex. 3). The notice was sent to Parker. (Resp. Ex. 3). Parker is authorized to represent all parties to the Agreement, Local 846, Local 847, and the RDC. (Tr. 20:22 – 25; Tr. 73:9 – 14). The argument can be made from the plain language of the Agreement that he is the only party of record for the Agreement representing the Union as it expressly states that the Agreement is "not binding unless executed by the President of the District Council." (GC Ex. 2: page 13). February 19, 2010 is "at least four months" prior to the contract anniversary date of February 10, 2011. The Article is silent on how early notice may be given. (GC Ex. 2: page 12). The only time requirement expressly included in the plain language of the Agreement is a deadline, namely "at least four months prior to [contract anniversary date of] February 10. (*Id*.).

Parker refused the notice sent by GCR. (Tr. 67:25 – 68:11). Parker testified that the Agreement does not require certified mail form a contractor to the Union for any purpose other than termination of the Agreement. (Tr. 68:15 – 22). When parties to an Agreement specify a particular delivery method for notice they create a mutual duty to accept items delivered accordingly. Failure to accept delivery was a material breach of the Agreement. The Union cannot rely on the end result of its breach of the express provision negotiated into the Agreement to bind GCR.

GCR tendered proper notice in compliance with the plain language of the Agreement and the Board should rule that its termination was effective under the provisions contained in the document. The Board should rule GCR was no longer bound to the Agreement after February 10, 2011.

II. REPUDIATION

Black's Law Dictionary 2nd Ed. defines repudiation as Rejection; disclaimer; renunciation; the rejection or refusal… of a duty or relation. When a party to a collective bargaining agreement repudiates the agreement, an unfair labor practice – the refusal to bargain – occurs. *A&L Underground*, 302 NLRB 467, 469 (1991). A party wishing to assert its rights under the Act when an unfair labor practice has allegedly been committed, must file the charge within six months of the occurrence of the unfair labor practice. 29 U.S.C. § 160(b); *A&L Underground*, 302 NLRB 467, 470 (1991). The Board has held that the 10(b) period begins to run at the time the union ***first*** has "knowledge of the facts necessary to support a ripe unfair labor practice." *St. Barnabas Medical Center*, 343 NLRB 1125, 1127 (2004).

When a party has clearly and unequivocally given notice that it is totally repudiating its collective bargaining agreement the Board requires that an unfair labor practice charge be filed within six months of the date of that total repudiation if the 10(b) time-bar is to be avoided. *A&L Underground*, 302 NLRB at 470 (1991). Clear and unequivocal notice can be actual or constructive. *Leach Corp.*, 312 NLRB 990, 991 (1993), *enfcd.* 54 F.3d 802 (D.C. Cir. 1995). Constructive notice of an unfair labor practice is established when a party could have discovered the alleged misconduct through the exercise of reasonable diligence. *Moeller Bros. Body Shop*, 302 NLRB 191, 193 (1992)("While a union is not required to police its contracts aggressively in order to meet the reasonable diligence standard, it cannot … ignore an employer or a unit… and

then rely on its ignorance of events… to argue that it was not on notice of the employer's unilateral changes."). See also *John Morrell & Co.*, 304 NLRB 896, 899 (1991)(10(b) period begins to run when "aggrieved party knows or should know that his statutory rights have been violated").

The General Counsel alleged, incorrectly, that an employer cannot repudiate an 8(f) pre-hire agreement. The agreement that was the subject of *A&L Underground*, however, was an 8(f) agreement. *A&L Underground* at 467 (1991).

The Board has found that a contract repudiation need not be an express, written repudiation but can be manifested by an employer's conduct. *St. Barnabas*, 343 NLRB at 1129 (2004). Failure to make pension-fund payments over an extended period of time is tantamount to repudiation and the union is put on notice by the sheer length of time during which the employer failed to make payments. *Natico, Inc.*, 302 NLRB 668, 671 (1991). See also *Park Inn Home for Adults*, 293 NLRB 1082 (1989)(where respondent stopped making pension fund contributions two years prior to contract expiration, union was on notice of repudiation).

When an employer consistently fails to abide by the terms of a collective bargaining agreement the union is put on notice that the agreement has been repudiated triggering the commencement of the 10(b) period for filing a charge. *St. Barnabas*, 343 NLRB at 1129 (2004). A union's failure to act on clear and unequivocal notice of contract repudiation precludes tolling of the 10(b) period.

A. GCR Repudiated the Agreement as early as March 2009.

Parker indicated GCR failed to comply with the Agreement "from day one." (Tr. 64:24 – 65:1). The parties entered into a settlement agreement concerning trust fund payments. (Tr. 102:3 – 8). GCR paid the settlement amount on or about December 22, 2010. (Tr. 65:5 – 11). Following

this settlement, Parker testified that GCR failed to implement any of the terms and conditions of the Agreement. (Tr. 65:12 – 66:8).

B. The Union Had Clear Unequivocal Notice of Repudiation

The Union had both actual knowledge of GCR's repudiation through its agent Parker and constructive knowledge through GCR's complete non-compliance. Parker is an agent of both Locals 846 & 847 and is authorized to act on their behalf. (Tr. 73:9 – 15). Parker's testimony clearly shows the Union had actual notice of GCR's total repudiation of the Agreement on "day one" (March 13, 2009) at least, and certainly by December 2010. (Tr. 64:24 – 65:1; 65:12 – 66:8; 69:1 – 7). Jones testified that after February 19, 2010 GCR fulfilled none of its obligations. (Tr. 84:2 – 4).

Even if Parker was not authorized to act on behalf of the Locals, the union cannot claim it did not have clear and unequivocal notice. If the union exercised any measure of reasonable diligence it would have discovered GCR's complete repudiation as required in *Moeller Bros. Body Shop*, 306 NLRB 191 (1992) and *John Morrell & Co.*, 304 NLRB 896 (1991). Parker testified that GCR did not use the JATC, did not use the hiring hall, did not make any payments to the funds, did not do ***anything*** expected of a contractor to fulfill its obligations under the Agreement. Parker had actual knowledge, and as their authorized agent, the Locals did as well. However, in the context of Parker's testimony that GCR did nothing to fulfill any obligations under the Agreement, the union certainly had constructive knowledge of GCR's repudiation.

C. The Union Failed to File Within the 10(b) Time Period.

1. The Union Still Has Not Filed an Unfair Labor Practice Charge Challenging GCR's Repudiation

The union has yet to file an unfair labor practice charge responsive to GCR's repudiation. The instant case is the first charge filed and it concerns a failure to provide information pursuant

to a request. The instant case does not allege any facts relative to contract repudiation. Even if the Board found that the instant case met the burden of challenging GCR's repudiation, the Union's claim would be time-barred. The facts established that the latest date the Union could be charged with notice is December 2010. Even under the most liberal interpretation of the facts, the 10(b) period expired long ago in June 2011. The instant case was filed in April 2015.

2. Strict Adherence to Board Precedent Indicates Challenge to GCR's Repudiation Was Time-Barred as Early as September 2009.

A strict reading of the case law requires a finding that the union was on notice well before December 2010. The Board expressly held in *Leach Corp.*, 312 NLRB 990 (1993) that ***first*** knowledge of facts necessary to support a ripe unfair labor practice charge begins the 10(b) period. The moment the first required payment was missed or the first non-union employee was used gave rise to facts necessary for an unfair labor practice charge. Parker's testimony that GCR did not comply from "day one" would indicate ***first*** knowledge of facts necessary to support a ripe unfair labor practice charge. Therefore, under strict reading of *Leach* the 10(b) period expired in September 2009.

Jones testified that GCR did nothing to comply with the Agreement after February 2010. The Union was obligated to exercise *reasonable diligence* to discover misconduct. Following February 19, 2010, when Jones indicated GCR stopped complying with the Agreement, the first required payment missed or first non-union employee working on-site with reasonable diligence would have uncovered misconduct. The 10(b) period under this theory expired in August 2010.

GCR completely repudiated its Agreement with the Union. Regardless of which theory the Board accepts for when the Union received notice, the 10(b) period expired long before April 2015, the filing date of the instant case. GCR is not obligated to provide the Union with its requested information.

3. Collateral Estoppel

During the hearing union counsel, Michael Evans ("Evans"), made reference to the union's "collateral estoppel" argument. It is Respondent's position that collateral estoppel simply does not apply to the instant case for many reasons.

The elements of a collateral estoppel affirmative defense are: 1) There must have been a prior litigation in which the identical issue was brought before the court; 2) the issue must have been actually litigated in the first judicial proceeding, and the party against whom collateral estoppel is being asserted must have had a full and fair opportunity to litigate the issue in the first judicial proceeding; and 3) The issue must necessarily have been decided and rendered as a necessary part of the court's final judgment. The evidence presented at hearing simply does not establish the elements of a collateral estoppel defense for the union's failure to follow Board precedent.

a. The Issues in Previous Litigation Are Different.

The Union's collateral estoppel claim rests solely on a previous arbitration, which is part of ongoing litigation currently being prosecuted in U. S. District Court of Oregon. The issues being litigated concern the Employee Retirement Income Security Act ("ERISA"). The case seeks ***past*** benefit fund payments. The issues in the instant case deal solely with whether there is a valid collective-bargaining relationship ***currently*** in existence between the parties.

1. The Arbitrator Did Not Address the Issue of Proper Termination Under the Agreement.

The arbitrator clearly states the issue being addressed at the outset of his decision and award: "Did the Employer violate ARTICLE XVII FRINGE BENEFIT FUNDS, ARTICLE XVIII IMPACT and ARTICLE XIX DUES CHECKOFF of the March 13, 2009 Collective Bargaining Agreement between the Grievant and the Employer? If so, what is the proper remedy?" (GC Ex.

6(a): page 4). This is the only issue framed by the arbitrator in his Decision and Order. (*Id.*). This is clearly not the issue before the Board in the instant case.

Evans solicited testimony from Parker citing a portion of the Decision and Order and characterizing the same as "acknowledgement by the arbitrator of the union's argument." (Tr. 43:7 – 15). Parker's testimony in this regard is misleading. The portion cited originates in the discussion portion of the Decision and Order. (GC Ex. 6(a): page 7). The Order portion of the document clearly begins after that citation. (*Id*. at page 9). The arbitrator acknowledged GCR's argument concerning the contract in the discussion portion of the document as well. (*Id*. at page 8 – 9). It is a basic tenet of legal argument that the holding or decision of a fact-finder has precedential weight, whereas the discussion does not.

2. The Arbitration Did Not Address Repudiation Under Board Case Law.

The issue of repudiation under Board case law was not an issue addressed by the arbitrator. (GC Ex. 6(a): page 4). Repudiation of an 8(f) pre-hire agreement which establishes a limited 9(a) relationship as alleged in the Complaint and admitted in the Answer (GC Ex. 1) is a question concerning representation. Congress vested, in the Section 9 of the Act, the NLRB with the ***exclusive authority*** to make the factual finding regarding the representative status of labor organizations. 29 U.S.C. §159; *West Point-Pepperell, Inc. v. Textile Workers Union of America, AFL-CIO*, 559 F.2d 304 (5th Cir. 1977)(emphasis added). It is clear that wherever there is a change in the representation of a union, ***the board, and not the courts***, is the proper body to reassess the change. *NLRB v. Warrensburg Board & Paper Corporation*, 340 F.2d 920 at 924 (2nd Cir. 1965)(emphasis added).

It is clear from the evidence and testimony that the sole issue addressed in the arbitration, as expressly stated in the Decision and Order, did not include the issues present in the instant case. The first element of a collateral estoppel claim by the Charging Party or General counsel fails.

b. The Issues in The Instant Case Were Not Litigated Previously

The second element of collateral estoppel requires that the issues attempting to be precluded have ***actually been litigated*** in the previous action. As discussed above, the issue of proper termination under the agreement was not the issue decided by the arbitrator. Even if the Board finds the proper termination issue was litigated, the issue of repudiation clearly was not. Repudiation is an issue concerning a change in representation status and an issue under the exclusive authority of the Board to determine. *NLRB v. Warrensburg Bd. & Paper Corp.*, 340 F.2d at 924 (2nd Cir. 1965).

It is clear from the evidence and testimony that the issue of repudiation was not litigated in the arbitration. The evidence, specifically the Arbitrator's Decision and Order, demonstrates that the issue of proper termination under the Agreement was also not litigated fully. The second element of a collateral estoppel claim by the Charging Party or General counsel fails.

c. The Oregon Court Has Not Reached a Final Judgment

Parker testified the ERISA litigation, of which the arbitration was a small part, is ongoing and therefore no final judgement has been rendered by the court. (Tr. 40:5 – 7). GCR moved to vacate the arbitration award as part of the ongoing litigation in the case, and the court thus far has denied GCR's motion. (GC Ex. 6(b); GC Ex. 6(c)). As with any ongoing litigation process, until a court has reached final judgment on all claims, motions may be reconsidered and decisions concerning the same can potentially be overturned. That is precisely why the courts have required, as the third element of a collateral estoppel defense, that the issue sought to be precluded be

rendered as part of a ***final*** judgement of the court. Parker's testimony under direct examination by union attorney Evans clearly established that the U.S. District Court of Oregon has not reached final judgement in the ERISA litigation. (Tr. 40:5 – 9).

It is clear from the evidence and testimony that the litigation which gave rise to the arbitration is not in a procedural posture of final judgment. As such, the arbitration award may still be subject to reversal or abrogation as part of a renewed motion to vacate or motion to reconsider. The third element of a collateral estoppel claim by the Charging Party or General counsel fails.

The "Board adheres to the general rule that if the Government was not a party to the prior private litigation, it is not barred from litigating an issue involving enforcement of Federal law which the private plaintiff has litigated unsuccessfully." *Roadway Express*, 355 NLRB No. 23, 4 (2010)(citing *Field Bridge Associates*, 306 NLRB 322, 322 (1992), enfd. Sub nom.)(See also *Service Employees Local 32B-32J v. NLRB*, 982 F.2d 845 (2nd Cir. 1993), cert. denied 509 U.S. 904 (1993). The Board is not a party to the ongoing Oregon action between GCR and the Union and was not a party to the arbitration that is a component of that ongoing litigation.

It cannot be said that GCR litigated unsuccessfully because the litigation is ongoing and the arbitration award may still be subjected to new motions to vacate or reconsider up until the District Court judge renders a final judgment. Even if the Board determines the arbitration has reached a final judgment procedural posture, it is well within the Board's jurisdiction and right to hear evidence and determine if under Federal law GCR's repudiation was effective and if the Union is time-barred from challenging that repudiation.

d. The Union Has Not Actively Sought to Enforce the Contract

Any claim by the Union that it has been actively enforcing or seeking to enforce the terms of the Agreement is not credible. The Union, as ancillary party to an ongoing lawsuit brought by the Trust Funds, seeking ***previously due trust fund*** payments from GCR. That lawsuit was not brought until on or about May of 2011 more than two years after Parker testified that GCR had stopped complying with the contract.

It is clear from the record and common practice that there is more to policing a CBA than merely collecting dues and trust fund payments. Parker admitted that since December 2010, GCR has done nothing to fulfill any of its obligations under the Agreement including use of the hiring hall, use of the JATC, ensuring it employs only eligible union members, the making of any payments, or "***anything that the Union expects of its union contractors…***" (Tr. 69:5 – 7).

Parker admitted, and Board records bear out, that the Union has not filed any unfair labor practice charges prior to the instant action filed in April 2015. (Tr. 69:8 – 11). In fact, the instant case still does not allege contract non-compliance, but rather seeks information. The non-compliance in this case was known to Parker as demonstrated by his testimony, and even if it were not would have been easily discovered under the *Moeller Bros. Body Shop* holding through "reasonable diligence". The union did not file any charges or grievances against GCR seeking to enforce any of the provisions of the CBA until April 2015, even though GCR failed to adhere to the Agreement since "almost day one," which the record demonstrates was on or about March 13, 2009, more than six years prior to the instant case. (Tr. 64:24 – 65:1; GC Ex. 2: page 1)

Finally, it bears noting that neither General Counsel nor Charging Party's attorney raised the defense of *res judicata* or presented evidence establishing the same. Even if such a defense were asserted, the single fact that the arbitration upon which the claim rests is part of litigation that

has not reached judgement precludes the defense. Therefore, any claim of *res judicata* is not ripe and cannot be asserted.

III. RELIEF SOUGHT

GCR respectfully requests the Board order the standard remedies of a cease and desist order and notice postings regarding the claims in the Complaint that have been admitted. Specifically, regarding the termination of Colby Lee, Respondent would request no further relief be granted as it provided the Board with proof of an unequivocal offer to rehire sent by certified mail, and offer ignored and refused by Mr. Lee. Regarding the remaining charge that was subject to testimony and evidence, GCR would respectfully request the Board find in favor of the Respondent and dismiss the charge. GCR would further request a cease and desist order be issued enjoining the Union from further information requests or other actions to which it is only entitled to engage in the context of a valid bargaining relationship.

GCR respectfully requests the Board find for the Respondent and dismiss the sole non-admitted charge from the Complaint. GCR further respectfully requests the Board issue a decision establishing the date of repudiation or termination.

IV. SUMMARY

The evidence presented, including extensive testimony of senior union official Parker, clearly demonstrates that GCR both provided proper notice of termination under the Agreement and affected a complete repudiation of its Agreement with the Union. The Union had both actual and constructive knowledge of GCR's termination and repudiation. The Union failed to file an unfair labor practice as required under extensive and long-held Board case law within the 10(b) period. The defense of collateral estoppel is ineffective as the issues were not the same as the instant case, were not actually litigated previously, and were not part of a final judgement.

GCR is not currently bound by a collective-bargaining agreement with the Union. GCR is not required to submit information in response to any request of the Union.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been made on Region 12 of the National Labor Relations Board via the Agency's e-filing portal, and courtesy copies have been electronically served on January 19, 2015 to the following parties:

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